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Opinion

September 9, 1957

Roy E. Batchelder, Secretary  
Division of Milk Control  
Department of Agriculture  
State House  
Concord, New Hampshire

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CONCORD, N.H.

This is in response to your request for our opinion as to whether two distributor's licenses issued by the board were legally given.

You indicate that the first license was issued to Saturley's Dairy of Epsom, N.H., and that in addition to three stores and two restaurants operated by that establishment, they have other retail customers. In the case of the second license issued to Red Oak Farm of Manchester, which is owned by David Lamontagne, you indicate that Lamontagne also operates the Red Arrow Restaurants in Manchester and that he also has other retail customers.

We are of the opinion that both of these licenses were properly issued and that the applicants fall within the definition of "distributor" contained in RSA 183:2. A distributor is therein defined as:

"any person who . . . sells . . . more than two quarts of milk daily . . . except those who sell milk for consumption on the premises."

When this question was originally brought to our attention in a meeting with yourself and your chairman, Maurice G. Chase, the important question seemed to be whether an individual was entitled to a distributor's license when the only sales of milk were to other establishments wholly owned by the distributor. With respect to the two licenses under consideration this question now seems to be moot inasmuch as both of the applicants have other retail customers, who presumably purchase more than two quarts of milk daily.

Very truly yours,

Elmer T. Bourque  
Assistant Attorney General

ETB/m